

Internal Revenue Service

District
Director

Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date:

JAN 25 1985

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations.

The information submitted discloses that on [REDACTED], [REDACTED] established an Agreement of Trust (Agreement) by and between herself as Settlor and Trustee. The Agreement was amended several times with the last amendment being executed on [REDACTED]. The Agreement provides that upon [REDACTED]'s death, [REDACTED] named individuals would become its trustees. [REDACTED] died on [REDACTED].

Under Article IV, Paragraph B of the Agreement as amended on [REDACTED], property known as [REDACTED] was conveyed to [REDACTED] upon [REDACTED]'s death to be used as a reception center. [REDACTED] is exempt from Federal income tax under section 501(c)(3) of the Code. The conveyance was subject to a life estate of [REDACTED] to the caretaker cottage located on the property. You ([REDACTED]) were created as a separate trust under this same Article IV, Paragraph B of the Agreement for the purpose of maintaining and operating the [REDACTED] property. You were funded by a bequest of [REDACTED]. In addition to maintaining [REDACTED] property, your trustees have been directed to use your funds to (a) pay all utility charges in respect of the caretaker cottage and (b) to continue to pay a salary or wage to [REDACTED] during the continuance of the life estate cited above.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual...

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In the case of Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust.

Rev. Rul. 69-256, 1969-1 C.B. 151 states that a testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not organized for charitable purposes.

In the case of Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945) Ct. D 1650, C.B. 1945, 375, it was held that the presence of a single non-charitable purpose, if substantial in nature will preclude exemption under section 501(c)(3) regardless of the number or importance of truly charitable purposes or activities.

Based on the available information, it is our opinion that you do not qualify for exemption from Federal income tax under the provisions of section 501(c)(3) of the Code because you are not organized and operated exclusively for one or more exempt purposes specified in section 501(c)(3) of the Code. This conclusion is based on the fact that your funds which are used to pay the utilities with respect to the caretaker cottage and salary to [REDACTED] during the tenure of his life estate serve a private interest rather than a public charitable interest and that this is a substantial part of your activities.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c)(3) of the Code and we have concluded that you do not. However, it is our opinion that you are a split-interest trust described in section 4947(a)(2) of the Code.

As you have not established exemption from Federal income tax under section 501(c)(3) of the Code, you are required to file Federal income tax returns annually on Form 1041. You are also required to file information returns on Form 5227.

Contributions to you are not deductible by donors under section 170(c) of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You must request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determined that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

[REDACTED]

If we do not hear from you within the time specified, this will become ~~our~~ final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(o) of the Code.

Sincerely yours,

[REDACTED]
District Director

Enclosures: 2